

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Joseph Kostelecky,

Case No. 23-CV-778 (KMM/DJF)

Petitioner,

v.

ORDER

Jared Rardin, Warden, FMC Rochester,
Respondent.

The above matter comes before the Court upon the Report and Recommendation (R&R) of United States Magistrate Judge Dulce J. Foster dated June 5, 2022. Mr. Kostelecky filed a habeas petition challenging the conditions of his confinement at FMC Rochester in light of his terminal illness, and he also asserted in it that the BOP miscalculated his time credits under the First Step Act. He requested a reduction of his sentence to time served or for “immediate release on conditions consonant with his medical needs.” [Dkt. No. 1.] The R&R recommends denying Mr. Kostelecky’s petition as moot. His challenge regarding the time credit calculation is moot because the BOP has now recalculated his release date. And his demand for home confinement is similarly moot because Mr. Kostelecky has since been placed in such a setting. [Dkt. No. 11] The R&R also recommends the petition be denied to the extent he seeks a sentence reduction to time served. [*Id.*]

The Bureau of Prisons transferred Mr. Kostelecky to home confinement on May 10, 2023. [*See* Letter to Magistrate Judge, Dkt. No. 8.] The Court directed the Clerk of Court to resend the Report and Recommendation to Mr. Kostelecky at his home address to ensure

that he received it and had an opportunity to file objections. [*See* Dkt. No. 12.] No objections have been filed to that R&R in the time period permitted.

The Court reviews de novo any portion of the R&R to which specific objections are made. 28 U.S.C. § 636(b)(1); D. Minn. LR 72.2(b). In the absence of objections, the Court reviews the R&R for clear error. *Nur v. Olmsted County*, 563 F. Supp. 3d 946, 949 (D. Minn. 2021) (citing Fed. R. Civ. P. 72(b) and *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (per curiam)). Based on the Court’s careful review of the R&R and the record in this case, the Magistrate Judge committed no error, clear or otherwise.

IT IS HEREBY ORDERED:

1. Mr. Kostelecky’s Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (Dkt. No. 1) is **DENIED AS MOOT** to the extent he challenges his FSA Time Credit calculation and seeks “immediate release” to home confinement because he has been transferred to home confinement;
2. Mr. Kostelecky’s Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (Dkt. No. 1) is **DENIED** to the extent he seeks a sentence reduction to time served; and
3. This matter is **DISMISSED WITH PREJUDICE**.

Let Judgment Be Entered Accordingly.

Date: **July 7, 2023**

s/ Katherine M. Menendez
Katherine M. Menendez
United States District Judge